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# THE INTERIM

SEPTEMBER 1994 HELENA, MONTANA VOL. IX NO. 16

## SUBCOMMITTEE ON INSURANCE ISSUES

Subcommittee Holds Final Meeting...The Subcommittee on Insurance Issues held its final meeting of the interim on Friday, August 26. The Subcommittee heard a report from the Insurance Commissioner's Office and considered a number of bill drafts for possible introduction in the 1995 legislative session.

Insurance Commissioner Offers Legislation...Insurance Commissioner Mark O'Keefe presented legislation being considered by his office for the 1995 session. The major piece of legislation is an insurance fraud act intended to help eliminate some of the fraud being perpetrated against insurance companies and consumers, and to ensure that the market conduct of companies is fair and complies with Montana law. Other legislation being considered includes an insurance producer fair employment act, long-term care insurance reform, revisions to guaranty fund act, inclusion of maternity benefits in the coverage offered by the Montana Comprehensive Health Association, living trust regulation, expenditure authority to recover investigative costs and administrative penalties, and some general clean-up legislation.

Subcommittee Hears from Health Care Authority...Mike Craig of the Montana Health Care Authority reported that the Authority will defer to the Subcommittee on the tort reform issues and that the recommendations of the Subcommittee will be considered by the Authority for its concurrence and support at the Authority's September meeting in Butte.

Subcommittee Considers Proposed Legislation...The Subcommittee discussed a number of bill drafts submitted by the Montana Medical

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Association (MMA), the Montana Trial Lawyers' Association (MTLA), or individual Subcommittee members. The proposals included:

- caps on noneconomic damages in medical malpractice actions;
- limits on contingency attorney fees in malpractice actions;
- mandatory periodic payment of future damages in all torts;
- revisions to the Montana Medical Legal Panel Act;
- revisions to the medical malpractice statute of limitations;
- limits on fees for providing health care information;
- mandatory professional liability insurance for physicians; and
- requiring medical malpractice insurers to report experience to an insurance rating organization.

After much testimony and Subcommittee discussion, the Subcommittee voted to sponsor two pieces of legislation. The first bill revises the medical malpractice statute of limitations by clarifying that the statute applies only to medical malpractice actions and not to other actions, such as a products liability claim, that may arise out of a malpractice action. The second bill revises the Montana Medical Legal Panel Act by requiring the panel to articulate its reasons for a decision and requiring mandatory but nonbinding mediation for an affirmative panel decision. Two other revisions to the Panel not adopted by the Subcommittee were allowing for summary disposition of claims before the Panel and allowing for transcripts of Panel proceedings. Although there was some Subcommittee support for these latter revisions, there was disagreement between the MMA and the MTLA as to the extent of these revisions. The Subcommittee encouraged the MMA and the MTLA to work together to resolve those differences before the 1995 session and bring in a bill that will be satisfactory to all parties involved.

Subcommittee Hears Presentation on Mandatory, Non-binding Arbitration... Russell Hill, Executive Director of the MTLA, made a brief presentation to the Subcommittee on mandatory, non-binding arbitration of medical negligence claims of \$50,000 or less. The purpose of such a proposal is to resolve smaller medical malpractice claims without the expense of a trial. Although the Subcommittee did not intend to take action on the proposal, it found the idea worth pursuing and encouraged MTLA to continue working on the proposal.

Final Report Due November 1...Staff will begin work on the final report of the Subcommittee within the next month. A final draft will be submitted to the Subcommittee for review and comment by mid-October.

## COMMITTEE ON INDIAN AFFAIRS

Committee Meets on Fort Belknap Reservation...The Committee on Indian Affairs met on the Fort Belknap Reservation on August 4 and 5. This was the first visit of the Committee to a reservation in several years.

Committee Tours Reservation...The Committee arrived at Fort Belknap at 1:00 p.m. on Thursday, August 4. Following a brief welcome from Chairman Harlan Mount and the Fort Belknap Community Council, the Committee began its tour of the reservation.

The tour included the Fort Belknap Industries, the Indian Health Service hospital, the Visitor Center and Rest Stop, the Kwik-Stop convenience store, and the IGA grocery store. With the exception of the hospital, all of the facilities are operated by the Fort Belknap Tribes. The Committee was also treated to an airplane ride over the Reservation to view the agriculture and irrigation projects, the buffalo herd, and the Pegasus gold mine located just outside of the southern boundary of the Reservation. On thursday evening, the Tribal Education Department hosted the Committee at a steak fry. It was an opportunity for the Committee to meet and visit with tribal officials and tribal members on an informal basis.

On Friday morning, the Committee was treated to breakfast at the Fort Belknap Community College. Committee members had an opportunity to visit with Margaret Perez, president of the College, about Indian higher education. Following breakfast, the Committee toured the College.

Committee Holds Meeting...Following the College tour, the Committee met in the Fort Belknap Community Council meeting room. The major items on the agenda included a discussion of legislation for the 1995 session and presentations by the Fort Belknap Tribes on their various programs. At the conclusion of the meeting, Committee members met with parents from the Hayes-Lodge Pole School District to hear some concerns of the parents regarding school district administration.

Committee to Sponsor Legislation...The Committee discussed a number of issues that were proposed for legislative sponsorship by the Committee. After much discussion the Committee voted to:

- sponsor legislation appropriating \$1.4 million from the general fund to assist nonbeneficiary (generally nonIndian) students attending tribal colleges;
- ask the Human Rights Commission to co-sponsor a hate crimes reporting bill;
- sponsor legislation to provide a public contract bidding preference for minority-owned business enterprises; and
- ask staff to research legislation implementing an Indian business loan program.

Staff was also asked to research the possibility of including tribal governments, where appropriate, in the definition of "local government", or its equivalent, in those statutes pertaining to economic development.

Committee Hears from Fort Belknap Tribal Officials...Following the discussion on proposed legislation, the Committee heard presentations from officials of the various tribal programs on the Fort Belknap Reservation. Each official gave a brief description of the program followed by issues and concerns that the Tribes would like the Committee to address. The Committee heard from the Education Department, the Health Facilities Project, the senior citizens, the Indian veterans, the Planning Department, the Housing Authority, the Health Department, tribal gaming, transportation, and the Natural Resources Department.

Some of the issues presented by the Tribes included:

- continued exclusion of P.L. 874 funds from school equalization formulas;
- abolition of the position of county superintendent of schools;
- encouragement of affirmative action employment standards in school districts;
- establishment of state-funded graduate scholarships for Indian students;
- continuation of the university system's Indian fee waivers;
- conclusion of agreement between Fort Belknap Tribes and Blaine County on return of state gasoline taxes collected on the Fort Belknap reservation;
- inclusion of tribal government in definition of "local government", or its equivalent, in state economic development programs;

- inclusion of tribal enterprises in SBA's definition of "small business";
- microbusiness loan program's policy of attaching additional requirements to proposals made by tribal governments and individual Indians;
- appointment of qualified Indians to positions that are supposed to represent Indian interests;
- funding for Indian veterans' memorial at Fort Belknap Visitor's Center;
- Indian cultural sensitivity training for state agencies; and
- meeting between tribal health officials and Montana Health Care Authority.

Committee Receives Gifts...As a token of their appreciation for the Committee's visit and in fulfillment of their cultural responsibility to welcome visitors into their homeland, the Fort Belknap Tribes presented gifts of sage and sweetgrass to the Committee members and staff. Representative Gervais, speaking for the Committee, thanked the Fort Belknap Community Council and the tribal members for their hospitality and said that this was the best meeting the Committee had ever had.

Other Business...Due to the success of the Fort Belknap meeting, the Committee recommended that its budget for the next interim be sufficient to hold six meetings, with at least three meetings on reservations.

Following the conclusion of the meeting, the Committee was treated to lunch at the newly-completed Fort Belknap Senior Citizens' Center.

## LEGISLATIVE COUNCIL

Council Meets in August...The Legislative Council met on Wednesday, August 24 in the Capitol. The Council discussed a number of issues related to the upcoming legislative session and to the operation of the Legislative Council.

Council to Sponsor Legislative Orientation...Sen. Mignon Waterman presented plans for a voluntary legislative orientation session scheduled to coincide with the pre-session caucus. The orientation has been developed by a private group working on "improving representative government" with

which Sen Waterman has been working. The session will be conducted on a voluntary basis for all legislators immediately prior to the organizational caucuses, probably Friday, November 18. The Council agreed to endorse and "sponsor" the session. The working group has asked the Council to undertake the orientation as a formal responsibility in subsequent years.

Council Discusses Pay Plan...During the current biennium, the Legislative Council has "frozen" Legislative Council staff pay -- not implementing the internal Council pay plan. The Council discussed the financial issues surrounding this situation. Meanwhile, the Council was assured that the agency directors and permanent committee chairs (Council, Audit, LFA, EQC, and CC) intend to proceed during September in designing a branchwide classification and pay plan, something that was started in earnest in February and scheduled for further work now.

Purchasing Officer's Duties Reassigned...The Council adopted a proposal to permanently eliminate the position of the purchasing and supply officer position (#01132), reassign its duties between the publications coordinator and accounting supervisor positions, and increase the salary of publications coordinator (position number 04050) and accounting supervisor position (#01141) effective August 1, 1994, in accordance with section 2-18-1107, MCA. The Council also approved undertaking a classification review for the positions and bringing a recommendation to the Council as soon as possible. This proposal will save the Council money, simplify office organization, make excellent use of existing staff skills while offering an opportunity for skill growth, and provide Amy Clark and Kevin Hayes an incentive award under the new law enacted in the 1993 Special Session.

Council Adopts FY 1996 and 1997 Budgets...The Council adopted the following budgets for FY 1996 and 1997.

The Council directed staff to draft a bill to amend 5-5-217, MCA (the statute governing interim committees), to provide that the Council will conduct no more than five prioritized studies. If new legislation is passed requiring that the Council conduct a study, the number will be reduced to accommodate that action.

The Council proposed an interim studies and conferences budget that proposed the funding of interim activities at a level adequate to support legislative participation at "traditional" levels on interim study committees, permanent committees within the Council budget, and for NCSL, CSG, and the Pacific Northwest Economic Region.

The Council approved a budget that remains essentially level with the current biennium for Council operations. The one exception to this is a major proposal rooted in recommendations of the Legislative Branch Computer Systems Planning Council that the Council undertake the responsibility of centrally installing, operating, and maintaining the

computing resources for the branch. This requires both the transfer of existing budget responsibilities from the LFA, Audit, EQC, House, and Senate and building the capacity to support the ever increasing requirements of the system into the Council budget.

The Council directed presentation of the budget for this change to the Legislature for its consideration clearly showing the amounts in each of the categories:

Present law	\$639,902
Transferred from other agencies	\$530,555
New initiatives	\$894,579

The ability of the Legislature to support public information demands, standardize and improve its own data processing needs, and eventually support legislator access to the information systems is the goal.

Legislative Information Sheets Distributed...Greg Petesch distributed legislative information sheets prepared by himself, Rep. Menahan, and Rep. Davis and graphically enhanced by Ann Patten. This information packet, designed for use in schools and by school groups visiting the Legislature, is a part of a Council initiative to implement a number of NCSL recommendations for improving understanding of the legislative process.

LEGAL DIVISION

Annotations Almost Completed...The Legal Division is completing work on updating the third shipment of annotations for the Montana Code Annotated. The third shipment will conclude annotation work for the interim. The annotations for each title of the Montana Code Annotated will have been revised since the last regular session to reflect legislative changes, new court decisions, new Attorney General opinions, new Law Review articles, revised administrative rules, and revised references to legal reference works. The third shipment should be mailed to subscribers in early November.

Bill Drafting Classes Successful...The Legal Division, with assistance from the Research Division, has completed a series of bill drafting classes for interested Executive Branch agencies. The classes were offered in lieu of the former biennial bill drafting seminar. The classes were tailored to each individual agency and afforded a much broader range of agency participation. The use of the Legislative Council's bill drafting programs, available to agencies through the Montana Code Annotated on CD-ROM, were highlighted. Agency response to the classes was very positive.

CLE Courses Continue...The Legal Division is winding up a series of continuing legal education courses presented to state government personnel

over the interim. Each attorney and legal researcher will have conducted a seminar. The topics of the seminars have covered a wide range of issues. The remaining seminars scheduled for September and October will cover state financial laws and using the Montana Code Annotated on CD-ROM as a research tool.

## COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET

PEPB to Meet in September...The Committee on Postsecondary Education Policy and Budget (PEPB) will meet on Friday, September 30, beginning at 9:00 in Room 108 in the State Capitol, to further discuss the Montana University System's (MUS) funding proposal. This proposal presumes that the appropriate way to ensure an optimal mix of student access, cost, and quality is to provide additional management flexibility to the MUS through enrollment and tuition flexibility. The Legislature would focus on agreed-upon output, or accountability measures, to gauge MUS performance. The MUS will address a number of specific questions raised at the last meeting of the PEPB, including:

- how students will be billed and what the billing statement will look like;
- how the number of resident students will be estimated;
- how high-cost programs will be determined and costed;
- how unit capacity will be determined;
- what accountability measures might be used; and
- how cost of education will be determined.

PEPB is also scheduled to discuss reasons for the difference between per student costs at the community colleges and the colleges of technology (formerly the vocational technical centers).

## COMMITTEE ON CHILDREN AND FAMILIES

Committee Holds Fifth Meeting...The Oversight Committee on Children and Families met for the fifth time on Friday, August 12 in Helena. The agenda included an update on the work of the Interagency Coordinating Council (ICC) on state prevention planning, and a review of the establishment of Managed Resources Montana, a partnership project to address the service needs of emotionally disturbed children.

Committee Confirms Recommendations...After reviewing tentative recommendations from past meetings, the Committee confirmed the following recommendations to the 54th Legislature:

- to reauthorize the Oversight Committee on Children and Families (LC 33), with a study directive to continue the review of adult protective services;
- to add the Commissioner of Labor and Industry as a member of the Interagency Coordinating Council on State Prevention Programs (LC 32);
- to encourage the following state agency initiatives: family preservation programs for families at risk of losing or abusing their children; building community family support networks; and early intervention services and home visiting programs that encourage healthy family development, maternal and child health, and parenting skills; and
- to encourage all Executive Branch agencies represented on the Interagency Coordinating Council and involved in prevention activities to cooperate for the purposes of developing a report on efforts to coordinate state prevention programs.

To Hold Final Meeting in September...The Joint Oversight Committee on Children and Families will hold a final meeting on Friday, September 16 in Room 108 of the State Capitol. The Committee will review the contents and style of the final report, finalize details of recommended legislation, and receive several reports on various projects of the Department of Family Services, the current activities of the Interagency Coordinating Council, and recommendations from the Board of Crime Control on an interim study of the Montana Youth Court Act.

## LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on September 8 and 9...The Legislative Finance Committee (LFC) will meet on Thursday and Friday, September 8 and 9 in the State Capitol. The LFC will meet in joint session with the Revenue Oversight Committee on Thursday, beginning at 9:00 a.m. in Room 325 to hear a report on 1997 biennium preliminary budget projections. The Thursday afternoon and Friday sessions of the LFC meeting will be in Room 104. The tentative agenda items are as follows:

### Thursday, September 8:

- Preliminary Budget Projections for the 1997 Biennium - Clayton Schenck
- Highways Cash Flow Projections - Skip Culver
- Report on Groundwater Assessment Program Fund Shortage -Taryn Purdy
- SRS Update - Dr. Peter Blouke
  - Medicaid Estimates (House Bill 34)
  - Managed Care Contracts (House Bill 33)
  - Status of Medicaid Provider Rate Reports
- Budget Amendment/Private Funds Report - Roger Lloyd
- Juvenile Programs Management Report - Al Davis, Dept. Family Services
- Study Report: Governance of the MSDB - Glenn Latham
- Report of Tuition Appropriation Authority Subcommittee - Rep. Peck

### Friday, September 9:

- SB 378 Subcommittee Report/Recommendations - Sen. Jacobson/Roger Lloyd/Skip Culver
- Corrections System Report - Sandy Whitney
- Subcommittee on Appropriations Subcommittees
  - Report/Recommendations - Sen. Harding/Skip Culver

- DofA Debt Service Financing - Nan LaFebvre
- HB 7 Budget Development Update - Clayton Schenck
- SB 32 - 30% Reversion: Status Report - Mary Longmaid
- Federal Retiree Negotiated Settlement - Jim Standaert
- Status of HB 2 Required Reports - Roger Lloyd

Senate Bill 378 Subcommittee Completes Recommendations...The Legislative Finance Committee's Subcommittee on Senate Bill 378 met on July 29 and approved a number of recommendations to present to the LFC at the September meeting. The recommendations reflect the Subcommittee's overall philosophy of reducing the amount of earmarking by state special revenue and reducing the use of statutory appropriations to fund agency operating expenses.

The Subcommittee will be making the following recommendations to the LFC:

- Direct staff to follow-up on accounts that should be deleted, reclassified, or analyzed due to high fund balances.
- Amend statute to de-earmark all revenue sources to the School Equalization Aid account, except permanent school trust interest and income, 55 mill statewide levy, and non-levy income. Total funding for public schools would not be affected by this action.
- Amend statute to deposit in the general fund all but gross vehicle weight fees, fuel taxes, and sale of merchandise revenue that is currently deposited in the Department of Transportation highways state special revenue account.
- Amend statute to separate Department of Livestock per capita levy revenue from other revenue not mandated by the Montana Constitution.
- Amend statute to combine into one allocation the current coal severance tax allocations for: 1) school equalization; 2) local impact; 3) Montana Growth Through Agriculture; 4) renewable resource development bond fund; 5) renewable resource loan debt service fund; 6) county land planning; 7) State Library Commission; and 8) conservation districts. These programs would not be eliminated. The money in this account would be available for prioritization and appropriation by the Legislature for these eight programs.

- Amend statute to combine into one allocation the current lodging facilities tax allocations for the: 1) Department of Commerce; 2) regional non-profit tourism corporations; 3) Department of Fish, Wildlife and Parks; 4) Commissioner of Higher Education; and 5) Montana Historical Society. These programs would not be eliminated. The money in this account would be available for prioritization and appropriation by the Legislature for these five programs.
- Amend statute to de-earmark 50 percent of Justices' Court fine revenue and reallocate those funds to the state general fund.
- Amend statute to de-earmark Department of Fish, Wildlife and Parks revenue from: 1) wildlife restitution payments; 2) motorboat certification identification fines; 3) snowmobile registration fines; and 4) off-highway vehicle fines. These funds will be deposited in the general fund.
- Amend statute to de-earmark Department of Health and Environmental Sciences civil penalties. Penalties would go to the general fund.
- Amend statute to de-earmark miscellaneous fines and forfeitures, also to be deposited to the general fund.
- Enact the following clean-up legislation: 1) amend coal severance tax statute to express all allocations as percentages of total collections rather than as percentages of a balance; 2) amend gasoline dealers' license tax statute to express allocations as percentages of net revenue, as per a 1980 Attorney General opinion, rather than percentages of gross revenue; 3) amend lodging facilities use tax statute to express all allocations as percentages of total collections rather than as percentages of a balance; 4) clarify existing statute (and SB378 intent) by amending statute to allocate 100 percent of interest earnings from coal severance tax funds to the general fund.
- Adopt categories for drafting committee bills implementing the above recommendations rather than including all recommendations in an omnibus bill.
- Enact the following language in Section 17-1-505, MCA to direct future legislatures: "No statutory appropriation should be approved when both of the following conditions exists: 1) the appropriation funds administrative operating costs of state government; and, 2) the appropriation is funded from a continuing and reliable source of revenue."

- Eliminate 16 statutory appropriations included in statute.

Subcommittee to Meet in September...The Subcommittee will meet again on September 8 in Room 108 of the Capitol, beginning at 7:30 a.m. Topics for discussion include changes to statute enacted by Senate Bill No. 378 and the effects of de-earmarking the School Equalization Aid Account 55 mill levy (to the general fund) on PL 874 money.

Human Services Provider Rate Working Group Meets...The Legislative Finance Committee considered two reports regarding budgeting the same types of present law (current level) adjustments for non-Medicaid human services contracts as for state agencies. The LFC directed that a working group of human service provider representatives and state agency, Office of Budget and Program Planning, and Legislative Fiscal Analyst staff develop and recommend a present law budget methodology for non-Medicaid human service providers to the Human Services Joint Appropriation Subcommittee during the 1995 Legislative Session.

The first working group meeting was held August 24. The group heard reports on: 1) how present law budgets are developed for state agencies; 2) how state agencies determine reimbursement rates paid to human service contractors; and 3) three possible types of budget methodologies that could be used to determine present law adjustments for human service contract costs.

The working group drafted a goal statement and selected two budget methodologies for further study. At its next meeting, October 17, the group will hear reports on: 1) determination of independent contractor status; 2) different types of standardized price indices; and 3) state programs that provide services similar to those purchased from human service contractors.

The group will develop and select a budget methodology for recommendation to the Human Services Appropriation Subcommittee and will establish criteria describing what types of human services contracts ought to be included in the budget methodology.

## REVENUE OVERSIGHT COMMITTEE

Committee Meets in Late July...The Revenue Oversight Committee met on July 29 at the Capitol. Agenda items included the ground water assessment program, FY 1994 revenue collections, tax expenditure study, taxable valuation of irrigated agricultural land, and a coal tax update.

Committee Supports Financially Troubled Program...In 1991, the Montana Legislature created the ground water assessment program for the

protection and management of ground water quality in Montana. The program is administered by the Montana Bureau of Mines and Geology under the direction of the Montana Ground Water Assessment Steering Committee. The program is funded by the resource indemnity trust tax (14.1% of the proceeds from the tax). During the 1993 Regular Session, the Legislature authorized the Bureau of Mines to spend up to \$666,000. However, the program has received significantly less than that amount because revenue from the resource indemnity trust tax was less than projected. In addition, the proceeds from the metal mines tax allocated to the resource indemnity trust fund were not diverted to the ground water assessment account because of a technical oversight in the original legislation. As a result, the Bureau of Mines has substantially cut back the program, including a reduction in staff from 12.75 FTE to 5.25 FTE.

Following a discussion of the magnitude of the problem with representatives of the Ground Water Assessment Steering Committee and the Bureau of Mines, the Revenue Oversight Committee encouraged the Bureau of Mines to request an interentity loan under the provisions of 17-2-107, MCA. The Committee also asked the Governor and the Legislative Finance Committee to support the interentity loan or a supplemental appropriation, if necessary. Finally, the Revenue Oversight Committee will support corrective legislation to ensure that a portion of the proceeds from the metal mines tax is allocated to the ground water assessment program. The Committee is determined that corrective legislation be enacted early in the 1995 session.

Committee Hears Revenue Report...Terry Johnson, Office of Legislative Fiscal Analyst, presented a report on fiscal year 1994 revenue collections for the general fund and the school equalization account. According to Mr. Johnson's report, revenue, including prior year adjustments and equity transfers, was \$21 million higher than anticipated by the Legislature during the November 1993 Special Session. As a result, the combined general fund and school equalization account ending fund balance was a little over \$22 million more than expected. Well over half (\$15.7 million) of the increase in revenue is attributable to the individual income tax.

Advisory Committee Recommends Base Water Costs...Judy Paynter, Department of Revenue, informed the Committee that the Agricultural Advisory Committee is recommending a base water cost of \$5.50 an acre for irrigated land. The Advisory Committee was appointed by the Governor, as required in Senate Bill No. 168 (1993 Regular Session), to review water costs, crop share arrangements, and other issues related to the valuation of agricultural land. According to Ms. Paynter, if no changes are made to SB 168, the taxable value of all agricultural land will increase 2.7% by 1997 but the taxable value of irrigated agricultural land will increase 53%. If the recommended base water cost is adopted

by the Legislature, the taxable value of all agricultural land will increase by 0.4% and irrigated land by 32%.

Committee Completes Tax Expenditure Study...Staff presented the final installment of tax expenditure reporting in Montana. The report suggested ways for expanding the scope of tax expenditure reporting and ways for improving the review process of tax expenditures. However, the Committee has not made specific recommendations to the Legislature.

Coal Tax Update...During the 1993 Regular Session, the Legislature eliminated the Coal Tax Oversight Subcommittee and assigned coal tax oversight duties to the Revenue Oversight Committee. Stephen Maly, Legislative Council, presented a brief history of coal severance taxation in Montana. He also presented a summary of recent legislation that affected the taxation of coal or that affected the distribution of related revenue.

For a copy of the report, "Coal Severance Taxes: A Brief Status Report", contact Stephen Maly at the Legislative Council, 444-3064.

Subcommittee Considers Bill Drafts...The Special Improvement District Financing Subcommittee met July 28 to consider a bill draft that would generally revise the laws concerning the financing of special improvement districts and rural special improvement districts. The bill draft would formally implement the proposals presented to the Subcommittee at its May 26 meeting. The bill draft, drawing in part from the provisions of Senate Bill No. 426, would require governing bodies to consider a number of factors, including the financial condition of the improvement district and the diversity of ownership within the district, before securing special improvement district bonds by the revolving fund. The bill draft would provide for additional security for bond issues. These would include a mandatory deposit in the revolving fund of 5% of the bond proceeds, the option to establish a district reserve fund, and an additional interest rate charge on special improvement district assessments. If a district reserve fund is established it must be used before resort is made to the revolving fund. The bill draft would also limit the period of time in which the revolving fund is required to make loans to an improvement district.

The Subcommittee requested that staff prepare a bill draft that would allow a county to take an insolvent rural special improvement district into bankruptcy.

The Subcommittee will meet Wednesday, September 7 in Room 108 of the Capitol, beginning at 1:00 p.m., to give final consideration to the bill drafts and to make recommendations to the full Revenue Oversight Committee.

September Meeting Rescheduled...The Revenue Oversight Committee has rescheduled the September 23 meeting for Thursday, September 8. The Committee will meet jointly with the Legislative Finance Committee

to consider the Legislative Fiscal Analyst's "big picture" analysis on the financial condition of the state. The meeting begins at 9:00 a.m. in Room 325 (Old Supreme Court Chambers) of the Capitol. Following the report, the Revenue Oversight Committee will conduct its regular business in Room 108 of the Capitol. Major items on the agenda include:

- recommendations from the Subcommittee on Special Improvement District Financing;
- a report from the Oil and Gas Conservation Division on enhanced oil recovery projects;
- a proposal from the Department of Revenue to simplify the taxation of oil and gas production; and
- a report from the Department of Revenue on the status of county assessors.

## **SUBCOMMITTEE ON WORKERS' COMPENSATION ALTERNATIVES**

Subcommittee Meets in August...The Subcommittee on Workers' Compensation Alternatives met on August 19 to hear information on the independent contractor exemption from workers' compensation insurance and employee leasing firms and their relationship with workers' compensation.

Working Group Formed...A working group was formed to explore the employee leasing issue and to work on proposed legislation. The working group met on August 30. Staff will gather some additional information, and the interested persons agreed to send their list of concerns to staff by September 14 to be compiled and mailed to the Subcommittee members for consideration at the final meeting on September 23.

Final Meeting Scheduled for September...The Subcommittee will conclude its work and finalize its recommendations on September 23.

## ENVIRONMENTAL QUALITY COUNCIL

EQC to Meet in September...The next meeting of the Environmental Quality Council is scheduled for Friday, September 30 in Room 437 of the Capitol. The morning will be a joint meeting with the Legislative Audit Committee to review the DHES Water Quality Bureau Performance Audit.

Regulatory Enforcement Subcommittee to Meet...The Regulatory Enforcement Subcommittee will hold a meeting on Thursday, September 29 in Room 104 of the Capitol to discuss the enforcement study framework, scope, and timing issues.

For more information on these issues, please contact the EQC staff at 444-3742.

## WATER POLICY COMMITTEE

Committee Holds August Meeting...The Water Policy Committee met on August 18 and 19. The Committee focused on the Late Claims Study and continued its look at instream flow issues in the Big Hole River Basin.

Late Claims Recommendation Made... At the August meeting, the Committee again heard public testimony regarding the Late Claims Study and reviewed Committee options for study completion. The Committee made a preliminary recommendation to grant no additional forfeiture remission to late water claim filers beyond the remission granted in SB 310. This preliminary recommendation was forwarded to over 300 individuals and organizations for review and comment. The Committee is expected to finalize its recommendation at the next meeting.

Those interested individuals not on the late claims mailing list who would like a copy of the preliminary recommendation should contact Committee staff.

Committee Travels to Big Hole River Basin...The Committee again traveled to the Big Hole River Basin for a public meeting regarding instream issues. The Committee then completed its tour of the lower Big Hole River Basin, travelling from Twin Bridges to Melrose. The Committee's intent was to provide a forum for the continued discussion.

of this important issue and to foster the opportunity for local responses to dewatering problems.

Other Issues Considered by Committee...The Committee also reviewed the current drought status and funding issues regarding the Ground Water Assessment and Characterization Program .

To Meet in Early October...The next Committee meeting will be scheduled for early October.

For more information on these issues, please contact the EQC staff at 444-3742.

## THE BACK PAGE

Reform of the workers' compensation system has been evolving slowly since 1987. The 1993 Legislature passed a significant package of legislation affecting the areas of safety, medical cost containment, and fraud. The Joint Interim Subcommittee on Workers' Compensation Alternatives has been closely following the developments of workers' compensation reform. This month's "The Back Page" is a brief update on the main points of reform.

### 1993 WORKERS' COMPENSATION REFORM

By Susan Fox

#### SAFETY

The 1993 Legislature adopted legislation that identifies two key areas in cost containment for workers' compensation: safety and medical cost containment.

The Safety Culture Act will affect almost everyone in the state, whether as an employer, as an employee, or as a student. The idea is to eventually make safety a part of our everyday culture. In doing so, we can make Montana a safer place to work and a better place to do business as the workers' compensation insurance rates stabilize to reflect safe work practices. Depending on the number of employees, the Act requires safety orientation for employees, self-inspections, safety meetings, and documentation of a safety program.

The Department of Labor and Industry administered the Safety Employment Education and Training Advisory Committee, which worked with employers, insurance companies, and state agencies to develop "user-friendly" administrative rules that were adopted and became effective May 1, 1994. The next phase is to develop an educational delivery system to bring the message to Montana's greatest natural resource and future workforce: our children and young adults. The Department's Safety Bureau provides safety brochures for all industries and provides other resources to the public (also available on the state electronic bulletin board). Each insurer is the enforcement agent, and since the State Compensation Insurance Fund (State Fund) currently has the greatest market share, including state agencies, it will consult with individual employers and agencies to help put a safety program together. The Department of Labor and Industry also publishes a quarterly newsletter.

that it sends to all employers; a recent issue featured safety in the workplace.

The State Fund has been involved in the Safety Culture Act in hiring more employees to assist employers to audit workplaces and to give advice on how to set up a safety program. The State Fund also is developing a library of information that is available to its insureds for assistance in developing safety programs.

## MEDICAL COST CONTAINMENT

Medical cost containment in traditional health care is commonly found in managed care and preferred provider organizations. However, because of the unique nature of the workers' compensation system, cost containment is a new concept that requires further refining.

In 1993, legislation was passed that provided for the use of managed care and preferred provider organizations (Chapter 628, L. 1993). The first step involved the Department of Labor and Industry developing administrative rules for managed care certification by the Regulation Bureau in the Employment Relations Division of the Department. The rules were developed by the Department and an advisory committee of legislators, insurers, and medical providers and were in place by March 1, 1994. By August, the Department had received nine applications from across the state, and seven of the applications had received preliminary approval. The Yellowstone Workers' Health Plan in Billings, affiliated with St. Vincent's Hospital, is the first managed care organization to be certified.

The second step allows each insurance company that carries workers' compensation insurance to contract with the certified managed care organizations and to develop their own preferred providers. The Department of Labor and Industry is also responsible to set up a system to regulate hospital rates and a medical committee to develop treatment guidelines.

The State Fund's Paul Bogumill has been working diligently to assist the medical community in understanding workers' compensation, and his medical background has helped the insurer to better understand the medical community's needs. The State Fund is encouraged in its negotiation efforts and in the prospects for managed care.

The State Fund also has worked hard to put in place preferred provider organizations. It is targeting areas that are not usually fee-scheduled, such as durable medical goods and pharmacy reimbursements, in order to

control costs and make sure that quality products and services are available to insured employees.

Co-payments were also authorized but have not been used by the State Fund to date. As soon as the managed care organizations are up and running, the co-payment provisions will begin.

## FRAUD

Another area that has received great attention and effort is workers' compensation fraud. Fraud can occur in workers' compensation claims submitted by employers, employees, or medical providers. The Departments of Justice and Labor and Industry and the State Fund are all involved in a coordinated effort, joined by local County Attorneys and other state agencies such as the Departments of Revenue and Social and Rehabilitation Services, to reduce fraud.

The Department of Justice has successfully organized a fraud team of investigators, a prosecutor, and support staff. The Department may assist County Attorneys in the prosecution of fraud cases or will handle those cases at the request of the counties.

There has been regular interagency coordination between the Department of Labor and Industry, the Department of Justice, and the State Fund in the form of monthly fraud meetings that lead to referrals for criminal prosecution, trouble-shooting, and discussion of new avenues for detection. Training on how to recognize and prevent premium fraud has been provided for all of those working on the fraud team.

A fraud and abuse hotline (1-800-922-2873) has been set up in the Office of Citizens' Advocate that fields calls regarding suspected fraud and abuse in workers' compensation, unemployment, and welfare. Depending on the insurer of the employer, the workers' compensation calls are referred to the Department of Labor and Industry (for Plans 1 and 2 and uninsured or underinsured employers) or to the State Fund (for Plan 3), which in turn can refer a case to the Department of Justice. Television publicity spots have been produced featuring Attorney General Joe Mazurek and Rick Hill, State Fund Chairman, encouraging people to call in if they suspect fraud and abuse in workers' compensation.

The fight against fraud is one aspect of the Uninsured Employer Program within the Department of Labor and Industry that detects and investigates fraud, attempts to bring employers into compliance, audits and penalizes uninsured employers, and pays benefits to workers injured while employed by an uninsured employer.

Through this program through June, 445 employers were penalized for over \$1.8 million, and the Department has collected \$700,000 to date. The number of cease-and-desist orders totals 119, and there have been 35 cases for violation of cease-and-desist orders or for operating knowingly without workers' compensation. In addition, the Department has covered 67 claims filed by uninsured workers.

The Department also has a new Underinsured Employer Program that investigates and detects fraud that is committed by misrepresenting classification codes. The program is in its infancy and is developing information sources, working with the Department of Revenue, the Labor Standards Bureau, the Unemployment Insurance Division, the Safety Bureau, the Northwest Fair Contracting Association, and others. The program sent letters to employers and industries for which the Department of Labor and Industry has received complaints, focusing on the construction industry. The Department also sent letters to private insurers to make them aware of new law. The program will be working with the State Fund for audit information.

Both programs receive referrals from the fraud and abuse hotline, and both receive referrals from and send referrals to the State Fund fraud and audit units.

The State Fund recently reported that the fraud investigation program has saved about \$1.5 million in the last year. Not only should fraud investigation, enforcement, and prosecution add up to savings for insurance companies, but these actions should also provide restitution that in turn will positively affect premiums and provide a deterrent effect that lets people know that fraud in all areas will not be tolerated.

The State Fund has developed a fraud indicator checklist for claims and for the fraud tips received. It has also developed a brochure to educate employers on what to do if fraud is suspected and how to prevent fraudulent claims.

## CONCLUSION

The 1993 reforms to the workers' compensation system appear to be successfully underway. Hopefully, the positive effects will be shared by all of the employees, employers, and insurers in the system and by state business as a whole.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

### SEPTEMBER

September 5, Labor Day, holiday

September 7, ROC Subcommittee on Special Improvement District Financing, Room 108, 1 p.m.

September 8, LFC Subcommittee on Review of Dedicated Revenue Provisions and Statutory Appropriations, Room 108, 7:30 a.m.

September 8, Legislative Finance Committee and Revenue Oversight Committee, Room 325, 9 a.m.

September 8, Legislative Finance Committee, Room 104, following joint meeting with ROC

September 8, Revenue Oversight Committee, Room 108, following joint meeting with LFC

September 9, Legislative Finance Committee, Room 104, 9 a.m.

September 9, Subcommittee on Veterans' Needs, Room 108, 9:30 a.m.

**September 15, ALL INTERIM STUDY WORK COMPLETED**

September 15, Judicial Unification and Finance Commission, Room 437

September 16, Committee on Children and Families, Room 108

September 23, Subcommittee on Workers' Compensation Alternatives,  
Room 104, 10 a.m.

September 29, EQC's Subcommittee on Regulatory Enforcement, Room  
104

September 30, Environmental Quality Council, Room 437

September 30, Committee on Postsecondary Education Policy and  
Budget, Room 108, 9 a.m.

## **OCTOBER**

October 10, Columbus Day observed, holiday

October 30, LFC's Working Group for Non-Medicaid Human Service  
Provider Budget Methodology



Montana Legislative Council  
State Capitol Room 138  
Helena MT 59620-1706

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